

"CS" SERIES

C O N T R A C T

PRINTING, BINDING, PACKAGING, AND DELIVERING THE
2011 IOWA ACTS AND THE 2011 CODE SUPPLEMENT

CS-2 **CONTRACT FORM**

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CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

CONTRACT

TABLE OF CONTENTS

Pt.	Subject	Page
I.	INTRODUCTION	3
II.	DEFINITIONS	3
III.	GENERAL PROVISIONS	4
IV.	STANDARDS	
	PRODUCTION	6
V.	STANDARDS	
	DELIVERY	7
VI.	SCHEDULE — TRIAL PERFORMANCE PERIOD	
	PRODUCTION AND DELIVERY OF PRODUCTION ITEMS	8
VII.	SCHEDULE — STANDARD PERFORMANCE PERIOD	
	PRODUCTION AND DELIVERY OF PRODUCTION ITEMS	9
VIII.	SCHEDULE — STANDARD PERFORMANCE PERIOD	
	PRODUCTION AND DELIVERY OF PUBLICATIONS	9
IX.	SCHEDULE — PAYMENT	10
X.	PROCEDURES AND REMEDIES FOR NONCOMPLIANCE —	
	GENERAL	13
XI.	PROCEDURES AND REMEDIES FOR NONCOMPLIANCE —	
	TERMINATION	13
XII.	PROCEDURES AND REMEDIES FOR NONCOMPLIANCE —	
	SPECIFIC PERFORMANCE	15
XIII.	PROCEDURES AND REMEDIES FOR NONCOMPLIANCE —	
	LIQUIDATED DAMAGES	16
XIV.	WAIVERS AND AMENDMENTS	17
XV.	EXECUTION AND EFFECT OF EXECUTION	18



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

I. INTRODUCTION

- A. **Parties.** The parties to this contract are the Legislative Services Agency, herein referred to as the "Agency," an organization created under the jurisdiction of the Iowa General Assembly pursuant to Iowa Code § 2A.1 and identified with the Federal Employer Identification Number 42-6022199, and West Publishing Corporation, d/b/a West® a Thomson Reuters business, herein referred to as "Contractor," a business located in Eagan, Minnesota, and identified with Federal Identification Number 41-1426973.
- B. **Purpose.** The purpose of this contract is to govern the production and delivery of the following publications: the Acts and the Code Supplement. It includes provisions governing both the production and delivery of production items and books associated with each publication.

II. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- A. **"Acts"** means the 2011 edition of the Iowa Acts and Joint Resolutions (Session Laws), a loose-spine, case-bound book, containing statutory provisions as enacted or item vetoed during a regular session and any extraordinary session of that General Assembly, together with miscellaneous materials, tables, and an index, that is published each year under the direction of the Iowa Code Editor pursuant to Code Chapter 2B.
- B. **"Book"** means a bound volume associated with the Acts or Code Supplement. "Books" means all bound volumes associated with the Acts or all bound volumes associated with the Code Supplement, unless described otherwise. *See Appendix A (CS-3).*
- C. **"Code"** means the 2011 edition of the Iowa Code (or the Code of Iowa) that is a loose-spine, case-bound set of multiple volumes that is published during each even-numbered year under the direction of the Iowa Code Editor pursuant to its Chapter 2B.
- D. **"Code Supplement"** ("CS") means the 2011 edition of the Code Supplement (or the Iowa Code Supplement), a perfect bound, softcover book containing statutes and miscellaneous materials, including various tables and an index, that supplements the Code, and is published during odd-numbered years under the direction of the Iowa Code Editor pursuant to Code Chapter 2B.
- E. **"Delivery"** means the physical or electronic transmission of communications, composed pages, a production item, or publication by one party to another party as provided in Part V, or payment as provided in Part IX. Delivery is accomplished by receipt.
- F. **"Production Item"** means a sample cover, set of digital proofs, or a set of assembled pages which are required to be produced by the Contractor for the Agency and delivered by the Contractor to the Agency as provided in this contract.
- G. **"Publication"** means each book associated with the Acts or each book associated with the Code Supplement. For the Acts, "publications" means the total number of all single books associated with the Acts. For the Code Supplement, "publications" means the total number of all single books associated with the Code Supplement.
- H. **"Sample Cover"** means a production item that is (1) a paper proof cover (sometimes referred to as a "laser proof") that illustrates how a book cover will appear when its publication is bound, or (2) a finished cover that is an exact replica of the book cover.
- I. **"Set of Assembled Pages"** means a production item that is a grouping of one set of book pages, sequentially arranged by page number. A set of assembled pages may be a set of digital proofs, including crop marks.
- J. **"Set of Digital Proofs"** means a production item that is a set of sheets of paper which replicate the Agency's composed pages and show how a book's pages will appear in a publication (e.g., with crop marks).



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

- K. **"Workmanship"** includes all aspects of labor and mechanical, chemical, or computer processes used to compose, create, or manufacture a production item or publication and the effort required to produce the appearance, sturdiness, and durability of a publication such as its binding, the appearance and placement of images on digital proofs and book pages, the placement of impressions and foils on a book's cover, and the alignment and cut of the book pages; the composition, color, legibility, crispness of text and artwork, and any necessary collating of digital proofs or assembled pages into sets.

III. GENERAL PROVISIONS

- A. **Appendices Incorporated by Reference.** The Appendices (CS-3) are incorporated as part of this contract by reference. If a provision in this contract and a provision in an Appendix (CS-3) conflict, the provision in this contract shall control.
- B. **Separate Contracts.** For purposes of determining a party's rights and obligations, this contract shall be deemed to incorporate two separate contracts, governing the production and delivery of production items and books associated with both publications: the Acts and the Code Supplement. Unless otherwise expressly stated, the same provisions govern both publications. A party's requirements to perform under one separate contract shall not affect the party's requirements to perform under the other contract, except as provided in Part X, Paragraph "D."
- C. **Choice of Law and Forum.** This contract is governed by the laws of the State of Iowa. All disputes and controversies regarding this contract shall be heard in the District Court of Polk County, Iowa. However, if jurisdiction is not proper in the Polk County District Court, actions shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum.
- D. **Conflict With Contract and Applicable Law.** In the case of a conflict between a provision of this contract and a statute or regulation of this state as judicially construed and in effect on the effective date of this contract, the provision of this contract controls, unless otherwise prohibited by a statute or regulation of this state as judicially construed and in effect on the effective date of this contract. Otherwise, a statute or regulation of this state as judicially construed and in effect on the effective date of this contract, and principles of common law as applicable on the effective date of this contract, shall be reasonably construed as being in harmony with the provisions of this contract.
- E. **Compliance With Applicable Laws and Regulations.** During the duration of this contract and as a condition of the Contractor's duty to perform under the provisions of this contract, the Contractor shall comply with all applicable laws and regulations of the State of Iowa and the United States, including but not limited to Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 (42 U.S.C. ch. 21), and the federal Occupational Safety and Health Act of 1970 (29 U.S.C. ch. 15).
- F. **Taxes; Certification — Collection and Remission of Iowa Sales and Iowa Use Tax.** The Agency or the Iowa General Assembly is not responsible for paying any taxes incurred by the Contractor in the performance of this contract. The Agency and the Iowa General Assembly are exempt from the payment of Iowa sales taxes, Iowa use taxes, and other taxes. The Contractor shall not collect or remit an Iowa sales tax or Iowa use tax on sales of tangible personal property or services for its performance under this contract. However, the Contractor certifies to Iowa's Department of Revenue, on any form required by the department, that the Contractor agrees to collect and remit Iowa sales taxes and Iowa use taxes otherwise due under Code Chapter 423 on the sales of tangible personal property and services as enumerated by statute, pursuant to Code § 423.2 and § 423.5.
- G. **Estimations.** Whenever this contract estimates a number of pages (or signatures) to be produced or estimates a number of publications to be delivered to a particular destination, the estimation is an approximation and subject to adjustment as provided in Part IX. The final numbers or an exact payment amount will be determined after the execution of this contract.
- H. **Counting Book Pages.** When counting book pages, one sheet of paper includes two pages, one on the front side and one on the reverse side.



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

- I. **Computing Time.** For purposes of computing time, including but not limited to purposes of calculating delivery requirements according to a schedule provided as part of a trial performance period as provided in Part VI or as part of a standard performance period as provided in Part VII or Part VIII, all of the following apply:
1. **Time of Day.** Any reference in this contract to time of day is calculated using Central Time. A day begins at 8:00 a.m. and ends at 4:30 p.m.
 2. **Days.** A "day" means a calendar day unless otherwise provided in this contract.
 - a. **Calendar Day.** A calendar day is any day of the week. In computing calendar days for purposes of delivery, the first calendar day is excluded and the last calendar day is included unless the last day falls on a Sunday or a legal public holiday as provided in Code § 1C.1, in which case the time prescribed is extended to include the next succeeding calendar day.
 - b. **Business Day.** A business day is a calendar day other than a Saturday or Sunday or a day recognized as a legal holiday as provided in Code § 1C.1. In computing time for purposes of delivery, the first business day is excluded and the last business day is included.
- J. **Agency's Interest in a Production Item or Publication.** A production item or publication shall not be subject to copyright by the Contractor in the United States or in any other country. The Contractor shall not use or release text or data originating from print or electronic media delivered to the Contractor under this contract that contains any portion of the production item or publication without the prior written approval of the Agency. The Contractor shall not produce a print or electronic version from such text or data without the prior written approval of the Agency. The Contractor shall not advertise itself as the State of Iowa's official publisher of a publication or any other item produced by or under the supervision of the General Assembly.
- K. **Party in Litigation.** The Agency will not act as a party in any lawsuit to protect or enforce a right or interest of the Contractor, unless the Agency consents in writing to become a party.
- L. **Delegation.** The Contractor shall not delegate (convey, assign, transfer, or subcontract) any interest in this contract to another person without the prior written consent of the Agency. The Contractor shall provide for subcontracting only as follows:
1. **Production (Book Bindery).** The Contractor may, with Agency approval, provide for the production of a production item or publication by a book bindery which acts under the direct supervision of the Contractor and provides for the production of (1) a production item during the trial performance period as provided in Part VI, (2) a production item during the standard performance period as provided in Part VII, or (3) a publication during the standard performance period as provided in Part VIII. See *Appendices A and B (CS-3)*.
 2. **Payment Obligation.** The Contractor and not the Agency shall be liable for any payment to a subcontractor for performance rendered by the subcontractor under this contract.
 3. **Duty to Perform.** The Contractor shall not be relieved from performing a duty under this contract because of a subcontract or a subcontractor's failure to perform a duty. All standards for production and delivery of production items and publications as provided in this contract shall apply to the Contractor regardless of whether the Contractor renders performance directly or by using a subcontractor.
 4. **Agreements.** The Agency may obtain and review any agreement executed between the Contractor and a subcontractor.
- M. **No Pecuniary Gain or Conflict of Interest.** The Contractor agrees that to its knowledge neither the staff of the Agency nor a member of the General Assembly of the State of Iowa has or will receive any direct economic benefit because of the selection of the Contractor as a party to this contract. The Contractor agrees that it has no interest and will not acquire any direct or indirect interest which would conflict in any manner with the performance of this contract, and that a person having such an interest will not knowingly be associated in the performance of this contract.



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

- N. **Fixed Price Contract.** This is a fixed price contract. Except as otherwise expressly provided in this contract, or expressly agreed to in writing by the parties, the contract price paid to a Contractor is fixed as provided in this contract. Except as provided in this contract, no special fees or expenses shall be charged directly or indirectly to the Agency, including labor, production materials, equipment, insurance, packing, freight, travel, parking, or any other costs incurred in producing and delivering production items or publications.
- O. **Renewal Options.** The parties shall elect an option to renew a contract as follows:
1. **Exercising Present Renewal Option.** The parties agree to implement their rights to execute this contract on a renewal basis as provided in Part III, Paragraph "O" of the contract for printing, packaging, and delivering the 2010 edition of the Iowa Acts executed by the parties on September 21, 2010, and as provided in Part III, Paragraph "O" of the contract for printing, packaging, and delivering the 2009 edition of the Code Supplement executed by the parties on October 28 and 29, 2010.
 2. **Reserving Future Renewal Option.** The parties reserve the right to execute a renewal contract to produce and deliver the next edition of the Iowa Acts in the following year or the Code Supplement in two years according to provisions substantially similar to the provisions of this contract, as negotiated by the parties.

IV. STANDARDS

PRODUCTION

- A. **Contractor's Duty of Performance.** The Contractor shall acquire all production materials, furnish all workmanship, and oversee all aspects of production.
- B. **General Standards.** Any detailed standard for production material or workmanship contained and required in this contract shall be the standard for production material or workmanship used to produce a production item or publication. However, if a standard is not specified in this contract or there is a question regarding the Contractor's compliance with a standard for a production material or workmanship, due to any ambiguity in this contract, all of the following apply:
1. **Production Materials.** If the Agency has approved without qualification a production material after the execution of this contract during the trial performance period as provided in Part VI or standard performance period as provided in Part VII, that same production material shall be used by the Contractor in the production of a production item during the standard performance period as provided in Part VII and in the production of a publication during the standard performance period as provided in Part VIII. The standard for a production material established pursuant to this Subparagraph 1 shall supersede any possible conflicting standard for the production material in this contract. In all other cases, the standard for a production material used to produce a publication shall be the same or equivalent to the standard used to produce the same publication for previous years as follows:
 - a. **Acts.** For the Acts, the 2010 edition of the Iowa Acts.
 - b. **Code.** For the Code Supplement, the 2009 edition of the Code Supplement.
 2. **Workmanship.** If the Agency has approved without qualification the workmanship used to produce a production item during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII, that same workmanship shall be used by the Contractor in the production of a production item during the standard performance period as provided in Part VII and in the production of a publication during the standard performance period as provided in Part VIII. The standard of workmanship used to produce a production item approved by the Agency without qualification shall supersede any possible conflicting standard for workmanship in this contract. In all



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

other cases, the standard for workmanship used to produce a publication shall be the same or equivalent to the standard used to produce the same publication for previous years as follows:

- a. **Acts.** For the Acts, the 2010 edition of the Iowa Acts.
- b. **Code.** For the Code Supplement, the 2009 edition of the Code Supplement.
- C. **Questions.** The Contractor shall notify the Agency of any question arising because of an apparent conflict between the general standards provided in Paragraph "B" and the detailed standards provided in Appendix A or B (CS-3) not resolved by the parties prior to production.

V. STANDARDS

DELIVERY

- A. **Communications.** Any communication between the Agency and the Contractor regarding this contract must be addressed to the party's respective contact persons, as specified in Appendix F (CS-3).
 - 1. **Book Bindery.** If the contact person specified in Appendix F (CS-3) is not responsible for the day-to-day operations in the book bindery, the Agency reserves the right to communicate with the person in the book bindery during the trial performance period as provided in Part VI, and during the standard performance periods as provided in Part VII or Part VIII.
 - 2. **Replacement.** If a party replaces a contact person, the party shall immediately notify the other party of the contact information for the new contact person.
- B. **General Duty to Deliver.** The parties shall deliver products as specified in Appendices C and D (CS-3).
- C. **Incomplete Delivery of Production Items Publications.** The Agency's delivery of a set of composed pages with missing pages shall be deemed to be a failure to deliver the entire set of composed pages, and the Contractor's failure to deliver a complete, satisfactory set of digital proofs shall be deemed to be a failure to deliver the entire set of digital proofs. However, the Agency may provide for incremental delivery of composed pages and for the incremental production and delivery of digital proofs. The Contractor's failure to deliver a complete, satisfactory set of assembled pages shall be deemed to be a failure to deliver the entire set of assembled pages. The Contractor's failure to deliver a complete and satisfactory set of book pages for a publication shall be deemed to be a failure to deliver the publication.
- D. **Subcontractor (Book Bindery).** The Agency may require that a subcontractor who is the book bindery deliver a production item simultaneously to the Agency and the Contractor during the trial performance period as provided in Part VI and the standard performance period as provided in Part VII.
- E. **Common Carrier Requirements.** The Contractor shall provide for the delivery of a production item or publication as specified in Appendices C and D (CS-3). However, the Agency may modify the special instructions specified in Appendix C or D (CS-3) prior to delivery, subject to the parties' agreement to alter or not to alter the contract price.
- F. **Delivery on Business Day.** The Contractor shall not deliver a production item or publication on a day other than a business day without the express approval of the Agency.
- G. **Excusable Failure to Deliver.** The Contractor is excused from delivering a production item or publication on a specific business day or to a specific destination if the destination does not accept receipt and the Contractor promptly notifies the Agency of the refusal. However, the Contractor must complete delivery on the next business day to that destination, unless the failure is excused as provided in this Paragraph "G," or the Agency provides otherwise.
- H. **Possession by Agency.** Delivery is not accomplished until the Agency takes possession of a production item or publication. Title does not pass to the Agency prior to the receipt of the production item or



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

publication by the Agency. The Agency's receipt of a production item or publication is not an approval of the production item or publication by the Agency. A production item or publication which is damaged prior to receipt by the Agency shall be deemed undelivered. When the Agency opens a carton containing a damaged production item or publication, it is conclusively presumed that the damage occurred prior to receipt (i.e., during production or delivery).

- I. **Review and Response.** The Agency shall review production items or publications and communicate a response to the Contractor as follows:
 1. **Exclusive Right of the Agency.** Even though another person may be authorized to receive a production item or publication, only the Agency is authorized to approve, disapprove, or approve with qualification a production item or accept or reject a publication.
 2. **Statistical Sampling.** In determining whether to accept or reject any publication or all publications delivered to the Agency as part of Normal Delivery or Special Delivery as provided in Appendix C (CS-3), the Agency shall examine a statistical sampling of at least 5 percent of the publications delivered as part of Normal Delivery.
 3. **Determination Period.** The Agency shall have a determination period to deliver its response to the Contractor as provided in Paragraph 4 and specified in Appendix D (CS-3). The Agency's determination period begins on the final date required for the delivery of a production item or publication or the actual date that such production item or publication is delivered, whichever is later.
 4. **Agency Response.** The Agency's response shall be one of the following: (1) to approve a production item without qualification, approve a production item with qualification, or disapprove a production item during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII or (2) to accept or reject a publication during the standard performance period as provided in Part VIII. The Agency shall be deemed to have approved a production item or accepted a publication delivered to the Agency at the end of a determination period as provided in Paragraph 3, unless the Agency responds otherwise.
 5. **Remedies.** The Agency may seek remedies for the Contractor's failure to perform as provided in Parts X through XIII.

VI. SCHEDULE — TRIAL PERFORMANCE PERIOD

PRODUCTION AND DELIVERY OF PRODUCTION ITEMS

The Contractor shall produce and deliver the following production items for Agency approval during a trial performance period:

- A. **Paper Proof Covers.** A paper proof cover shall illustrate how the book cover for the Acts and for the Code Supplement will appear when that publication is bound, including all lettering and numbering, and the location of the required impressions and foil stamping, as specified in Appendix B (CS-3). The Contractor shall deliver the paper proof cover to the Agency as specified in Appendix D (CS-3), and the Agency will review the paper proof cover and deliver its response to the Contractor as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3).
- B. **Sets of Digital Proofs.** The Agency will deliver composed pages for a publication in an electronic format to the Contractor as specified in Appendix C (CS-3). The Contractor shall use the composed pages to produce a set of digital proofs that meet the standards specified in Appendix B (CS-3). The Contractor shall deliver the set of digital proofs to the Agency as specified in Appendix D (CS-3), and the Agency will review the set of digital proofs and deliver its response to the Contractor as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3).



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

VII. SCHEDULE — STANDARD PERFORMANCE PERIOD

PRODUCTION AND DELIVERY OF PRODUCTION ITEMS

The Contractor shall produce the following production items and deliver them for Agency approval during a standard performance period:

- A. **Finished Cover.** A finished cover shall be an exact replica of the book cover for the Acts or for the Code Supplement when the respective publications are bound, including all lettering and numbering, and the location of the required impressions and foil stamping, as specified in Appendix B (CS-3). The Contractor shall deliver a finished cover to the Agency as specified in Appendix D (CS-3), and the Agency will review a finished cover and deliver its response to the Contractor as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3).
- B. **Sets of Digital Proofs.** The Agency will deliver composed pages for a publication in an electronic format to the Contractor as specified in Appendix C (CS-3). The Contractor shall use the composed pages to produce a set of digital proofs as specified in Appendix B (CS-3). The Contractor shall deliver the sets of digital proofs to the Agency as specified in Appendix D (CS-3), and the Agency will review the sets of digital proofs and deliver its response to the Contractor as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3).
 - 1. **Incremental Delivery of Composed Pages and Sets of Signatures.** The Agency may deliver the composed pages to the Contractor in installments by groupings of signatures. After the Contractor receives an installment of composed pages and produces the set of digital proofs, the Contractor shall produce and deliver that set of digital proofs to the Agency.
 - 2. **Deadline.** The Contractor shall deliver a set of digital proofs or installments of a set of digital proofs to the Agency as specified in Appendix D (CS-3). However, the Agency may waive this requirement and authorize the Contractor to deliver the entire set of digital proofs produced from multiple installments of composed pages to the Agency on a later business day.
- C. **Sets of Assembled Pages.** A set of assembled pages may be an assembled set of digital proofs, or a set of press proofs, for a publication, except that each set shall be three-hole punched to fit in a standard three-ring binder. The sets of assembled pages shall meet the standards specified in Appendix B (CS-3). The Contractor shall deliver the sets of assembled pages to the Agency as specified in Appendix D (CS-3), and the Agency will review the sets of assembled pages and deliver its response to the Contractor as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3).

VIII. SCHEDULE — STANDARD PERFORMANCE PERIOD

PRODUCTION AND DELIVERY OF PUBLICATIONS

The Contractor shall produce publications associated with the Acts or the Code Supplement and deliver them to the Agency for approval during a standard performance period in compliance with the requirements of this contract, including the standards provided in Part IV, this part, and the Appendices (CS-3). The Contractor shall package (including loading) and ship (including unloading) the publications as specified in Appendix C (CS-3). The Contractor shall provide for both Normal Delivery and Special Delivery of the publications to all destinations specified in Appendices C and D (CS-3), and the Agency will review the publications and deliver its response to the Contractor as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3).



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

IX. SCHEDULE — PAYMENT

- A. General.** The Agency is liable to the Contractor as provided in this contract only for amounts paid as consideration under this contract, and subject to the following:
- 1. Contract Price.** Unless this contract is terminated as provided in Part XI, payment of the contract price shall be based on the production and the delivery of production items and publications associated with the Acts and Code Supplement to the Agency according to the terms and conditions of this contract.
 - 2. Invoice Required.** The Contractor shall present an invoice or invoices to the Agency for payment of the contract price as specified in Appendix D (CS-3). The Contractor shall present a separate invoice to the Agency for the Acts and the Code Supplement pursuant to the payment schedule provided in Paragraph "B." If payments are made in installments, the Contractor shall identify the final invoice and specify the amount of the last payment owed by the Agency. The Agency's payment to the Contractor of the amount stated in an invoice shall be deemed conclusive evidence of satisfaction by the Agency of any payment obligation for the items invoiced, and each party waives any right to later contest the invoice amount based on error. The Agency's payment of the final invoice shall be deemed conclusive evidence of payment of the contract price owed to the Contractor, regardless of any error by the parties.
- B. Payment Schedule.** Upon delivery of an invoice as provided in Paragraph "A," Subparagraph 2, the Agency shall pay the Contractor the contract price.
- 1. Conventional Payment Schedule.** The Agency will pay the Contractor according to a conventional payment schedule. The Agency may make one payment to the Contractor at the end of the determination period for the Acts and another payment to the Contractor at the end of the determination period for the Code Supplement as specified in Appendix D (CS-3). The Agency shall pay the Contractor 100 percent of the amount of the contract price for all publications accepted under the contract as provided in Paragraph "C."
 - 2. Early Payment Schedule.** The Agency, upon request by the Contractor or upon its own initiative, may pay the Contractor the contract price or a portion of the contract price earlier than required under Subparagraph 1. In order to receive payment of an amount earlier than required under Subparagraph 1, the Contractor must verify that the Contractor has incurred all production costs associated with performance under this contract. The decision of the Agency to pay an amount earlier than required under Subparagraph 1 shall not be construed as an amendment of this contract, shall not obligate the Agency to pay the Contractor an amount other than as provided in this contract, shall not constitute a waiver of any requirement of the Contractor, and shall not relieve the Contractor of its duty of performance under this contract.
- C. Amount of the Contract Price (Base Price and Adjustments).** The Agency shall pay the Contractor a base price which is an estimate of the contract price calculated for the production and delivery of a publication's order by assuming that each publication has an estimated number of pages divided into signatures as specified in Appendix A (CS-3), subject to adjustment as provided in this Paragraph "C."

Table A.1
Base Price

Publication	Amount
Acts	\$ 14,652.00
CS	\$ 30,570.00



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

The Agency shall adjust the base price specified in Table A.1 to achieve the contract price as follows:

1. **Replacement Pages.** The Agency shall adjust the base price to account for the replacement of an occasional page or pages of a publication as required by the Agency due to the Agency's correction of the appearance or text of a page during publication production. The Agency shall deliver a replacement page to the Contractor by electronic transmission. The prices charged by the Contractor for incidental work shall not exceed those customarily charged by the Contractor to its customers for similar incidental work. Upon request, the Contractor shall provide the Agency with proof of customary charges. The Contractor shall not charge the Agency for the first \$300 incurred for replacing pages of a publication.

Table A.2
Adjustments Based on Replacing Pages

Publication	Amount Per Hour
Acts	\$75 After the First \$300.00
CS	\$75 After the First \$300.00

2. **Actual Number of Signatures (Adjusted).** The Agency shall adjust the base price specified in Table A.1 to account for the actual number of signatures for each publication as adjusted during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII (the number of signatures that the Agency instructs the Contractor to be added to or subtracted from the estimated signature count). The Agency shall adjust the base price to pay for the adjusted number of signatures (i.e., an increase or decrease in the estimated number of signatures) of all publications that are part of an order.
3. **Publications Dedicated for Normal and Special Delivery.** The parties shall use good-faith efforts to adjust the base price specified in Table A.1 to account for the actual number of publications delivered as part of normal and special delivery as specified in Appendix C (CS-3). The Agency may increase or decrease the number of the publications dedicated for normal delivery and decrease or increase a corresponding number of publications dedicated for special delivery, including by drop shipment or mail, to destinations specified in Appendix C (CS-3). The Agency may also increase or decrease the number of the publications dedicated for drop shipment and decrease or increase a corresponding number of publications dedicated for mailing as part of special delivery as specified in Appendix C (CS-3). The Agency shall notify the Contractor at least 15 days before the day that the Contractor is required to deliver an order of publications to the Agency as specified in Appendix D (CS-3). If the locations for delivery change, the Agency shall provide the Contractor with addresses for those locations in a MicroSoft® Excel format as required in Appendix C (CS-3).



CONTRACT FORM (CS-2) **CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT**

Table A.3
Base Price Adjusted Due to an Increase/Decrease in the Signature Count

	Signature Calculation	Number of Signatures	Amount			
			Per Publication		All Publications Per Order	
Publication Acts	Unadjusted	25 1/2 Per Publication/45,900 Per Publications Ordered	\$ 8.14 Base Price ÷ by Ordered Publications		\$ 14,652.00 Base Price	
	Adjusted	Each Additional Full	Increased Amount Per Publication:	\$.23	Increased Amount Per Publications Ordered*:	\$ 414.00
		Each Additional Half		\$.11		\$ 198.00
		Each Fewer Full	Decreased Amount Per Publication:	\$.23	Decreased Amount Per Publications Ordered*:	\$ 414.00
		Each Fewer Half		\$.11		\$ 198.00
	Unadjusted	52 Per Publication/156,000 Per Publications Ordered	\$ 10.19 Base Price ÷ by Ordered Publications		\$ 30,570.00 Base Price	
	CS Adjusted	Each Additional Full	Increased Amount Per Publication:	\$.17	Increased Amount Per Publications Ordered*:	\$ 510.00
		Each Additional Half		\$.08		\$ 240.00
		Each Fewer Full	Decreased Amount Per Publication:	\$.17	Decreased Amount Per Publications Ordered*:	\$ 510.00
		Each Fewer Half		\$.08		\$ 240.00

*Increase or Decrease in Amount Per Publication x Number of Publications Ordered

4. **Actual Number of Publications (Overrun).** The Agency shall adjust the base price specified in Table A.1, or if necessary the adjusted base price specified in Table A.3, to account for any number of up to 100 additional publications of an overrun which the Contractor delivers to the Agency during the standard performance period as provided in Part VIII. The adjusted amount for each publication of the overrun shall be discounted by 25 percent of the base price of the amount of the same publication produced and delivered as part of an order multiplied by the total number of publications associated with the overrun.

Table A.4
Base Price Adjusted Due to an Overrun

		STEP ONE					STEP TWO				
		Base Price Per Publication (as Adjusted by Signature Count)		Percentage Discount Per Publication		Discounted Amount	Discount Amount Subtracted from the Base Amount Per Publication (as Adjusted by Signature Count)		Number of Overrun Publications		Increased Amount for All Overrun Publications
Publication	Acts	\$ _____	x	.25	=	\$ _____	\$ _____	x	_____	=	\$ _____
	CS	\$ _____	x	.25	=	\$ _____	\$ _____	x	_____	=	\$ _____



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

X. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — GENERAL

- A. **All Legal Remedies Available.** Remedies available as provided in this contract for breach of contract are in addition to every other remedy available to the parties at law or in equity. The Agency may utilize a procedure and remedy for noncompliance as provided in this contract in addition to another procedure and remedy also provided in this contract, including but not limited to termination as provided in Part XI, a demand for specific performance as provided in Part XII, or the assessment of liquidated damages as provided in Part XIII and specified in Appendix E (CS-3).
- B. **Notice and Response Requirements.** The Agency shall notify the Contractor in writing of any noncompliance with the terms and conditions of this contract that demands a remedy as provided in Paragraph "A." Except as provided in Part XI, the Agency shall deliver the notice of noncompliance within the determination period for the approval of publications as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3). The notice demanding a remedy for a breach of contract as provided in Part XII or XIII and specified in Appendix E (CS-3) shall document each breach of contract and the remedy demanded or imposed for the breach of contract. A notice of breach of contract which demands a remedy shall suspend any obligation by the Agency to carry out the provisions of this contract until the Agency accepts the remedy. The Contractor may dispute the Agency's determination of a breach by delivering a notice of dispute to the Agency within 30 calendar days after the Agency delivers its notice to the Contractor. The dispute shall be resolved by the parties in good faith.
- C. **Indemnification.** Except as provided in this contract, the Contractor shall jointly and severally indemnify and hold the Agency, the Iowa General Assembly, and the State of Iowa harmless from and against all liability, loss, damage, or expense, including reasonable attorney fees, by reason of a breach of contract by the Contractor.
- D. **Termination of Both Contracts.** A party's performance under the separate contract for the Acts shall not affect the party's performance under the other contract for the Code Supplement, unless a party terminates the contract for the Acts under Part XI. In that case, the party may also terminate the contract for the Code Supplement. However, the party terminating the contracts must notify the other party of the terminations at the same time as provided in Paragraph "B."

XI. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — TERMINATION

- A. **Justifiable Termination.** Any of the following shall be just cause for terminating this contract, without breach of contract:
1. **Insufficient Moneys.** If moneys necessary to satisfy this contract price are at any time not forthcoming or insufficient through the failure of the State of Iowa to make sufficient moneys available as a result of legally binding action, then the Agency may terminate this contract by giving not less than 20 calendar days' written notice to the Contractor documenting the lack of funding. Upon termination, the Agency agrees to pay all costs incurred by the Contractor up and until the date of termination. If moneys necessary to satisfy the contract price become available within 40 calendar days subsequent to the termination, the Agency agrees to reexecute a contract with the Contractor under the same provisions of this contract and any amendments as agreed to by the parties.
 2. **Force Majeure.** If the performance of any provision of this contract is prevented by an event which is an act of God, civil tumult, war, epidemic, interruption of transportation or communication, or any other cause beyond the control of a party, as determined by the Agency, that party is relieved of the performance of that provision of this contract. However, if the Contractor is prevented from performance, the Contractor shall provide the Agency with written notice within 10 calendar days



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

describing the preventing event, the possible duration of the preventing event, the Contractor's efforts to remedy the situation caused by the preventing event, and the expected effect of the preventing event upon the schedules contained in this contract. It shall be the Contractor's responsibility to show that the cause of the preventing event was beyond the Contractor's control, that the preventing event reasonably caused nonperformance, and that the Contractor was not reasonably able to anticipate the preventing event in order to avoid the nonperformance.

- B. *Nonjustifiable Termination.*** Either party may terminate this contract if the other party breaches this contract by failing to substantially comply with a provision of this contract. The party terminating this contract shall deliver written notice to the other party within 20 calendar days following the breach. The written notice shall document the breach of contract. If the Contractor breaches this contract by failing to satisfy such provision, the Agency may withhold all or a portion of unexpended moneys of the contract price, retaining such moneys as liquidated damages. The Agency may also continue this contract and retain such moneys as liquidated damages. The Agency shall deliver a written notice to the Contractor stating the Agency's decision to retain an amount in liquidated damages not later than 20 calendar days following the delivery of its notice documenting the breach of contract.
- C. *Unilateral Termination.*** The Agency may unilaterally terminate this contract if the Contractor commits an egregious breach of this contract as specified in this Paragraph "C." The Agency shall deliver a written notice to the Contractor within 30 calendar days following the Agency's discovery of the egregious breach, but within the determination period for the acceptance or rejection of publications as provided in Part V, Paragraph "I," and specified in Appendix D (CS-3). The written notice shall document each cause of the egregious breach.
- 1. *Egregious Breach.*** As used in this Paragraph "C," an egregious breach is limited to any of the following:
- a. *Unauthorized Copyright.*** The Contractor obtains or attempts to obtain a copyright in text or data produced in a publication or originating from electronic media delivered to the Contractor by the Agency as provided in this contract.
 - b. *Unauthorized Release.*** The Contractor releases text or data delivered by the Agency to the Contractor under this contract to any person, including but not limited to a related entity of the Contractor, the text or data is produced in a publication or originates from electronic media delivered to the Contractor by the Agency, and the release is not expressly approved in writing by the Agency.
 - c. *Unauthorized Publishing.*** The Contractor uses text or data delivered by the Agency to the Contractor under this contract for purposes of publishing without the express written approval of the Agency.
 - d. *Unwarranted Delay.*** The Contractor fails to deliver any of the following:
 - (1) *Production Item.*** A production item as required to be delivered to the Agency during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII more than 10 calendar days after due.
 - (2) *Publication.*** A publication required to be delivered to the Agency during the standard performance period as provided in Part VIII more than 20 calendar days after due.
 - e. *Disapproved Production Item (Grossly Unsatisfactory).*** The Contractor delivers a production item during the trial performance period as provided in Part VI or the standard performance period as provided in Part VII which the Agency disapproves because it determines that the production item is grossly unsatisfactory. A set of digital proofs or set of assembled pages is deemed grossly unsatisfactory if text is corrupted or does not otherwise match the composed pages delivered by the Agency to the Contractor for production of the set of digital proofs. This Subdivision "e" does not apply to a production item that is unsatisfactory due to the Agency's use of technology or procedures to produce or transmit information to the Contractor for the production of the production item.



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

text or data in a manner specified by the Agency. Nothing in this paragraph restricts the Contractor from releasing text or data provided to the Contractor by the Agency under the terms of another contract for a purpose unrelated to the production or delivery of a publication under this contract.

6. **Unauthorized Publishing.** The Contractor uses text or data used in the production or delivery of a publication for purposes of unauthorized publishing of information delivered to the Contractor by the Agency. The Contractor shall destroy any publication which uses such information upon demand by the Agency. Nothing in this paragraph restricts the Contractor from using text or data or releasing text or data provided to the Contractor by the Agency under the terms of another contract.
- B. **Compliance Period.** Unless the Contractor disputes the Agency's demand for specific performance as provided in Part X, Paragraph "B," the Contractor shall provide specific performance as demanded in the Agency's notice within the same period of time required for the original delivery. However, if the Agency's demand is for the production and delivery of a publication to correct and replace a publication that the Agency rejected, the Contractor shall deliver the corrected replacement publication to the Agency as provided in Paragraph "C" within 20 calendar days following the delivery of the Agency's notice to the Contractor.
- C. **Replacement.** If the Agency disapproves a production item, rejects a publication, or does not receive a production item or publication, as provided in Paragraph "A," the Contractor shall replace the production item or publication as required by the Agency.
 1. **Production Items.** If the Agency disapproves an entire set of digital proofs, the Contractor shall deliver a set of corrected replacement sets of digital proofs or any part of the corrected replacement set of digital proofs to the Agency in the manner specified by the Agency. If the Agency disapproves a set of assembled pages, the Agency shall return one set of assembled pages or a representative percentage of pages only upon request by the Contractor and at the Contractor's expense.
 2. **Books.** If the Agency rejects a publication, the Agency shall return the publication or a representative percentage of book pages that are in its custody to the Contractor only upon request by the Contractor and at the Contractor's expense. For the Acts, the Agency may demand that the Contractor replace all publications if the Agency could unilaterally terminate the contract due to an egregious breach as provided in Part XI, Paragraph "C" because 15 percent or more of the publications are determined unsatisfactory. For the Code Supplement, the Agency may demand that the Contractor replace all publications because 15 percent or more of the publications are determined unsatisfactory. In the case of a publication required to be delivered to an Agency's customer, the Contractor shall deliver the replacement publication to the customer or deliver the publication to the Agency and reimburse the Agency for its costs to directly deliver the corrected publication to its customer. The Agency may deduct the amount of the reimbursement from the contract price.

XIII. PROCEDURES AND REMEDIES FOR NONCOMPLIANCE — LIQUIDATED DAMAGES

- A. **General.** During the trial performance period as provided in Part VI, or the standard performance periods as provided in Parts VII and VIII, the Agency may assess and impose liquidated damages against the Contractor for a designated breach of this contract as provided in this part that will result in the delay of a publication's delivery to the Agency. It is assumed that the late delivery of a publication will consequently reduce the Agency's sales of the publication. In addition, the late delivery of a publication will result in an accompanying loss of the Agency's reputation consequently reducing future sales of the Iowa Acts, Iowa Code, Code Supplement, and other Agency publications. It is assumed that the late delivery of the production item or the delivery of an unsatisfactory production item will consequently postpone the Agency's review and approval of the production item, causing a delay in the production and delivery of its associated publication. The Agency's imposition of liquidated damages applies regardless of whether a production item or associated publication is or is not actually delivered late because it is assumed that any



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

delay in the Contractor's delivery of the production item will be rectified by the Agency taking extraordinary measures to restore the schedule for production, if possible. The Contractor's late delivery of a set of assembled pages will reduce the efficiency and effectiveness of the Agency in performing critical legislative functions, including drafting and reviewing proposed legislation.

- B. Designated Breaches.** The Agency may assess and impose liquidated damages for a designated breach involving the delivery of a publication later than required under Part VIII, as specified in Appendices C and D (CS-3), or for another designated breach that includes the Contractor's failure to properly deliver a publication or production item associated with the publication, subject to the cap on liquidated damages as provided in this Paragraph. See *Appendix E* (CS-3).

1. Calculation. The Agency shall assess liquidated damages based on the following calculations:

- a. Predetermined Rate.** Each designated breach involving a publication or production item associated with that publication, other than a set of assembled pages, shall be assessed at a predetermined rate. A predetermined rate shall apply to each publication associated with the Acts. Another predetermined rate shall apply to each publication associated with the Code Supplement. A separate predetermined rate applies to a set of assembled pages.
- b. Actual or Predetermined Days of Delay.** A publication or production item shall be assessed for the actual number of days that the publication or production item is delivered late. The assessment shall be calculated on a calendar-day basis for a publication or associated production item other than a set of assembled pages and a business-day basis for a set of assembled pages. Any other designated breach involving a publication shall be assessed for a predetermined number of calendar days that the publication is expected to be delivered late due to the designated breach. Similarly, any designated breach involving a production item, other than a set of assembled pages, shall be assessed for a predetermined number of calendar days that the associated publication is expected to be delivered late due to the designated breach. The predetermined number of calendar days shall be added to the last required delivery day for that publication as if the Agency had demanded specific performance on that delivery day as provided in Part XII and a satisfactory publication or production item was properly delivered on the last predetermined calendar day. For the Acts, the required delivery date is the last day that all associated publications must be delivered to all destinations. For the Code Supplement, the required delivery date is the last day that all associated publications are required to be delivered to all destinations.
- c. Total Number of Publications Ordered.** The amount of liquidated damages calculated for a single publication shall be multiplied by all identical publications ordered. For the Acts, the amount shall be calculated on a per book basis multiplied by all such books ordered. For the Code Supplement, the amount shall be calculated on a per book basis multiplied by the total order of all such books ordered.

2. Amount of Liquidated Damages Capped. The Agency shall not assess or impose liquidated damages for an amount that exceeds a maximum amount for all breaches classified under a category described in this Part for each publication based on a percentage of the contract price for the publication as provided in Part IX, and specified in Appendix E (CS-3).

XIV. WAIVERS AND AMENDMENTS

- A. Writing Requirement.** A waiver or amendment of a provision of this contract shall not be valid unless made in writing.
- B. Waiver Restriction.** No person representing the Agency may waive a requirement or amend this contract, except Mr. Glen Dickinson, Director of the Legislative Services Agency; Mr. Richard Johnson, Legal Services Division Director; or Ms. Leslie Hickey, Iowa Code Editor.



CONTRACT FORM (CS-2)

CONTRACT 2011 IOWA ACTS & 2011 CODE SUPPLEMENT

- C. **Specific Waiver — Trial Performance Period.** Any person specified in Paragraph "B" may waive the trial performance period for the production and delivery of a production item by delivering a written notice of the waiver to the Contractor.
- D. **Failure to Act is Not a Waiver.** The failure of a party at any time to enforce a provision of this contract is not a waiver of the provision, and does not affect the validity of any provision of this contract or the right of either party to subsequently enforce a provision of this contract. A decision by the Agency to ignore a breach of this contract by the Contractor is not a waiver of a subsequent breach of this contract by the Contractor.

XV. EXECUTION AND EFFECT OF EXECUTION

- A. **Integration.** Except as provided in this Paragraph "A," this contract contains the entire agreement between the Agency and the Contractor, and representations made before the signing of this contract shall not be binding, and neither party shall rely upon conflicting prior representations in entering into this contract. However, if the parties disagree regarding an issue which is not expressly addressed in this contract, or regarding the interpretation of a provision in this contract, which is expressly addressed in a provision contained in the Contractor's Proposal Form (CS-1), the provision contained in the proposal form shall be deemed as part of this contract. Otherwise, this contract supersedes the provisions of Proposal Form (CS-1) or agreements made prior to the execution of this contract.
- B. **Effective and Termination Dates.** This contract takes effect upon being signed by authorized representatives of the Agency and the Contractor and continues until the provisions of this contract are satisfactorily performed, or until this contract is otherwise terminated under its provisions.
- C. **Signatures.** The duly recognized representatives of the Agency and the Contractor have on the date noted signed their names to and executed this contract:

Glen Dickinson
Director
Legislative Services Agency

Date

Ellen Gillespie
Senior Director
Customer Contract Management

Date

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Code/2011/CS-2 Contract 2011.doc

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